*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.10032 of 1997

% 25-11-2004

# Baddam Satyanarayana Reddy .. Petitioner

Vs.

**$** The State of A.P. Rep by its

Chief Secretary to Govt., A.P.Secretariat,
Hyderabad and others. .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Mr.A.Satyanarayana Reddy

^ Counsel for respondents : Government Pleader for Home

?CASES REFERRED :

1993(2) SCC 746

2 1997(1) SCC 416

[3] 1984(1) SCC 200

[4] (1997) 3 SCC 433

[5] (1996) 4 SCC 742

[6] (1983) 4 SCC 141

[7] (1995) 3 SCC 42

[8] (1994) 6 SCC 565

[9] AIR 1965 S.C. 1039

[10] (1982) 3 SCC 131

[11] (1982) 2 SCC 583

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE P.S.NARAYANA**

**WRIT PETITION NO : 10032 of 1997**

Between:

Baddam Satyanarayana Reddy, S/o Raghava Reddy,
aged 46 years, occ: agriculture, R/o.Paidi Chintalapally, V/o Dharmaram Mandal,

Karimnagar Dist.,Presently R/o H.No.10-1-331/1, Bagyanagar, Karimnagar.

**..... PETITIONER**

AND

1 The State of A.P. Rep by its Chief Secretary to Govt., A.P.Secretariat, Hyderabad.
2 The Principal Secretary to Govt., Home Dept., A.P.Secretariat, Hyderabad.
3 The Principal Secretary to Govt., Revenue Dept., A.P.Secretariat, Hyderabad.
4 The District Collector, Karimnagar.
5 The Superintendent of Police, Karimnagar.
6 The Mandal Revenue Officer, Dharmaram Mandal, Karimnagar Dist.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Mandamus directing the respondents: a) to contain the naxalite problem by taking positive socio economic steps; b) to create conditions which would be conducive to the persons like the Petitioner to go back to the villages and take up agricultural activities; c) to pay a compensation of a sum of Rs.4.50 lakhs to the Petitioner being the damage caused to him by naxalites; d) to pay compensation of Rs.30,000/- per year for the loss of agricultural income to the Petitioner till such time the respondents create conditions conducive to go back to the villages or acquire the lands of the Petitioner by paying market value; e) to provide Government employment to any one of the sons of the Petitioner; and f) not to collect the land revenue for the lands which are kept follow the year 1994;

**Counsel for the Petitioner:MR.A.SATYANARAYANA REDDY**

**Counsel for the Respondent No.: GP FOR HOME**

**The Court made the following :**

ORDER:

The writ petitioner, Baddam Satyanarayana Reddy, filed the present

writ petition praying for issuance of a writ, order or direction more particularly in the nature of mandamus directing the respondents to contain the naxalite problem by taking positive socio-economic steps, to create conditions which would be conducive to the persons like the petitioner to go back to the villages and take up agricultural activities, to pay a compensation of a sum of Rs.4.50 lakhs to the petitioner being the damage caused to him by naxalites, to pay compensation of Rs.30,000/- per year for the loss of agricultural income to the petitioner till such time the respondents create conditions conducive to go back to the villages or acquire the lands of the petitioner by paying market value, to provide Government employment to any one of the sons of the petitioner and not to collect land revenue for the lands which are kept fallow from the year 1994 and to pass such other order or orders as this Hon'ble Court may deem fit in the circumstances of the case.

The case of the petitioner is that he is an agriculturist by profession owning about 8 acres of land and it is his source of livelihood. On 24-6-1982 his associate by name Ramalingam was murdered by nine militants of CPI (ML) P.W.G. group by dragging him out of the bus and axed him to death. The petitioner and one Musuku Raji Reddy were eye witnesses to the said incident. The said S.C.No.149/82 under Section 302 IPC was tried by the I Additional Sessions Judge, Karimnagar and they deposed against the radicals on the assurance

given by the police with a view to fulfill their duties as citizens. The accused therein were convicted imposing sentence of life imprisonment and since then they became the target of the said radical group. The petitioner also had specifically averred the instances at paragraphs 4, 5, 6 and 7 of the affidavit filed in support of the writ petition. The petitioner had referred to Cr.No.21/84/S.C.No.112/85 on the file of Assistant Sessions Judge, Peddapalli and also Cr.No.89/88. Because of the harassment it is stated that the petitioner left the village and had been taking shelter here and there under the surveillance of police and his wife and mother are looking after agriculture. It is also stated that in the year 1994 members of Devanna Dalam belonging to CPI (ML) P.W.G. had extorted an amount of Rs.30,000/- from the petitioner and he was forced to give up agriculture as per the wishes of the said radical group and he was forced to migrate and take shelter at Karimnagar without any source of income. It is further stated in the affidavit that added to the above sufferings, in the year 1996 on 10-1-1996 Nagaraju dalam of P.W.G. burnt the house of the petitioner by pouring diesel and kerosene to ashes causing a damage of Rs.6,00,000/-. As per police mediation a report taken during the course of investigation valued the same at Rs.5,75,000/-. Several instances had been narrated and it was clearly averred that because of the grievance aforesaid the radicals have not been allowing him

either to do agriculture or to sell away his properties and there is no protection to the life of the petitioner and also his family members and equally there is no protection to his properties. The petitioner also made a representation to Human Rights Commission and the same was referred to High Court and the High Court was pleased to admit and it was taken up as W.P.No.7375/96 which was disposed of on 21-8-1996 by the Division Bench directing the Collector to consider his application for payment of damage caused to him within two months.

**It is stated that the petitioner made fresh representation to the Collector, Karimnagar on 30-8-1996 but the Collector failed to appreciate the same and granted only Rs.23,000/- towards ex-gratia by G.O.Rt.No.5698, General Administration (SC.A) Department dated 14-11-1996 and gave a memo dated 29-9-1996 and stated that he had been paid Rs.1.29,417/- from Insurance Company and therefore no more compensation need be paid to him. The petitioner also had averred that the petitioner filed a protest letter before the 4th respondent pleading that the 4th respondent should have paid compensation in terms of G.O.Ms.No.70, dated 26-2-1996 which provides for 75% of compensation for the damage caused to the victims. In the said circumstances narrating all the events in detail, the writ petitioner had prayed for the reliefs specified supra.**

**The 5th respondent filed a counter affidavit wherein certain facts no doubt were admitted but however specific stand was taken that it is no doubt true**

**that the petitioner was not allowed to cultivate his lands by extremists and the State is trying its best to control the extremist activities and it is not possible to provide individual protection to the petitioner since there are more than 500 persons identified as targets of the various extremists groups in Karimnagar District.**

**Sri Satyanarayana Reddy, the learned Counsel representing the writ petitioner would submit that right to life is not mere animal existence and it is something more and it is inclusive of right to have livelihood. The learned Counsel also would submit that for the sin of having figured as a witness, the petitioner had been continuously harassed by the extremist groups and his property was damaged and he had sustained heavy loss and it would amount to violation of his fundamental right under Article 21 of the Constitution of India and also his Constitutional right under Article 300-A of the Constitution of India. The learned Counsel also would submit that in the light of the consistent views expressed by the Apex Court it is a fit case where appropriate compensation may have to be awarded and suitable directions be issued in this regard.**

**On the contrary, the learned Government Pleader for Home would contend that it is no doubt true that in view of the extremist activity several such instances are being reported from different parts of the State and it is also true that the petitioner had figured as a witness as specified by him in the affidavit filed in support of the Writ Petition and several of the facts averred in the affidavit filed in support of the Writ Petition are true and correct. However, the learned**

**Counsel would submit that it is very difficult to provide for individual protection in such cases and at any rate in the light of the stand taken by the 5th respondent in the counter affidavit the claim of compensation is highly excessive and definitely on higher side and the State cannot be made liable in such cases.**

**Heard both the Counsel and perused the material available on record.**

**There is no serious controversy relating to several of the facts. The fact that the petitioner figured as an eye witness in S.C.No.149/82 where extremists were involved as accused is not in controversy. The other series of events which had been narrated also are not in serious dispute. It is also stated that a representation was made to the District Collector/4th respondent on 30-8-1996 but however the District Collector/4th respondent appears to have granted only Rs.23,000/- as ex-gratia by G.O.Rt.No.5698, General Administration (SC.A) Department dated 14-11-1996. In** NILABATI BEHERA Vs. STATE OF ORISSA **the Apex Court at para-10 observed :**

> **"In view of the decisions of this Court in *Rudul Sah v. State of Bihar* {1983(4) SCC 141), *Sebastian M.Hongray v. Union of India* (1984(1) SCC 339), *Sebastian M.Hongray v. Union of India* (1984) 3 SCC 82), *Bhim Singh v. State of J & K* (1984 Supp. SCC 504), *Bhim Singh v. State of J & K* (1985) 4 SCC 677), *Saheli: A.Women's Resources Centre v. Commissioner of Police, Delhi Police Headquarters* (1990) 1 SCC 422) and *State of Maharashtra v. Ravikant S.Patil* (1991) 2 SCC 373), the liability of the State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction**

**between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightaway that award of compensation in a proceeding under Article 32 by this Court or by the High Court under Article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings."**

**In the light of the ratio laid down in** D.K. BASU Vs. STATE OF WEST BENGAL **there cannot be any doubt or controversy that in such cases under the realm of public law while exercising powers under Article 226 of the Constitution of India apart from the powers of the Supreme Court under Article 32 of the Constitution of India, definitely appropriate directions can be issued. In** JIWAN MAL KOCHAR Vs. UNION OF INDIA Vs. **where a writ petition was filed for expunging certain remarks alleged to have been made by Supreme Court and High Court against the petitioner in different Criminal Appeals in which the petitioner was not a party, it was held that the remarks, if any, made by the courts are directed not to be taken into consideration in any proceeding, civil or criminal, in any trial court or appellate court against the petitioner and the relief of damages and compensation for alleged losses, humiliation and indignation suffered by the petitioner cannot be granted by Court under Article 32 of the Constitution of India. In the case of accidental death and fake encounter and payment of compensation in** PEOPLES UNION FOR CIVIL LIBERTIES Vs. UNION OF INDIA **it was held that remedy by way of award of compensation is available in public law. In** PUNJAB HARYANA HIGH COURT

BAR ASSOCIATION Vs. STATE OF PUNJAB **the issuance of directions relating to the payment of compensation in relation to abduction and alleged murder of an Advocate, his wife and minor child and the aspect of police atrocities, false imprisonment and public accountability had been dealt with in detail.** RUDUL SAH Vs. STATE OF BIHAR AND ANOTHER **the Apex Court held that compensation for illegal detention can be granted under Article 32 of the Constitution of India without affecting his right to sue for damages. In** CONSUMER EDUCATION & RESEARCH CENTRE Vs. UNION OF INDIA **it was held that in public law claim for compensation is a remedy available under Article 32 or Article 226 of the Constitution of India for the enforcement and protection of fundamental and human rights and the defence of sovereign immunity is inapplicable and alien to the concept of guarantee of fundamental rights and there is no question of defence being available for the Constitutional remedy and it is a practical and inexpensive mode of redress available for the contravention made by the State, its servants, its instrumentalities, a company or a person in the purported exercise of their powers and enforcement of rights claimed either under the statutes or licence issued under the statute or for the enforcement of any right or duty under the Constitution or the law. In the case of detention of a married woman on the pretext of her being a victim of abduction and rape and police officers threatening and commanding her to implicate her husband and his family in a case of abduction and forcible marriage thereafter and the Police Officers subjecting her to physical, mental and psychological torture calculated to create fright to make her submit to the demand of the police and to abandon**

**her legal marriage and ultimately compelled her to write a statement as commanded by the Police Officers which was reported by another police officer in the case diary as her statement under Section 161 Cr.P.C. and her husband and his family members also were tortured and humiliated, State Government was directed to launch prosecution against police officers concerned and also to pay compensation in** ARVINDER SINGH BAGGA Vs. STATE OF U.P. . **In** M/s.KASTURILAL Vs. STATE OF U.P. **it was held that the State is immune from liability in case of claim for damages arising out of tortuous acts committed by public servants in course of employment and in exercise of statutory functions delegated to them by the Government.**

**It is suffice to state that the decision referred (9) supra upholding the States plea of sovereign immunity for tortuous acts of its servants is confined to the sphere of law in tort which is distinguishable from the State's liability for contravention of fundamental rights to which the doctrine of sovereign immunity is not applicable in the Constitutional scheme and it is no defence to the Constitutional remedy under Articles 32 and 226 of the Constitution of India where under compensation for contravention of fundamental rights can be awarded. Thus the march of law commencing from** SANT BIR Vs. STATE OF BIHAR , MISS VEENA SETHI Vs. STATE OF BIHAR **and the decisions referred to supra passing through** RADUL SAH Vs. STATE OF BIHAR AND ANOTHER **(referrd (6) supra)**, NILABATI BEHERA Vs. STATE OF ORISSA **(referrd (1) supra) to** D.K.BASU Vs. STATE OF WEST BENGAL **(referred (2) supra)**, **the law relating to issuance of suitable directions in relation to payment of compensation for**

**violation of fundamental rights and the Constitutional rights falling under Articles 32 and 226 of the Constitution cannot be in any doubt whatsoever. Thus the compensatory jurisprudence in the realm of public law is clearly well settled by the series of decisions of the Apex Court and a careful tracing of the journey of law commencing from the earliest decision** KASTURILAL'S CASE **(referred (9) supra) dealing with sovereign immunity till** D.K. BASU **(referred (2) supra) would clearly go to show that the Apex Court repeatedly upheld the powers of the Constitutional Courts in awarding compensation in suitable cases under the realm of public law and virtually the compensatory jurisprudence vis-à-vis the realm of public law had been well expanded by the aforesaid judicial pronouncements.**

**As can be seen from the averments made in the affidavit filed in support of the Writ Petition, the damage caused to the property and the continuous harassment of the extremist groups virtually preventing the petitioner from cultivating the lands appear to be the main grievance. It is no doubt true that to give individual protection in such cases there may be certain practical difficulties on the part of the State. It is also no doubt true that as far as the right to property is concerned in view of Article 300-A of the Constitution of India, it is just a Constitutional right and no more a fundamental right. However, there cannot be any controversy that the right to have peaceful living and peaceful enjoyment of the property also would be inclusive of right to life falling under Article 21 of the Constitution of India. The State is bound to offer reasonable and appropriate protection for every citizen to make a**

**peaceful living. This is a case where an unfortunate citizen had figured as a witness in a Sessions Case where some persons belonging to an extremist group figured as accused and that is the reason why the petitioner was made the target and he is being continuously harassed by the said group. In such cases it is the bounden duty of the State to afford necessary protection inasmuch as it is the duty and obligation on the part of the State to maintain law and order and also to afford necessary protection to the individual citizens. However, except the statement made in the affidavit relating to the estimation made by the police, there is no other material placed before the Court relating to the real value of the property relating to which damaged was caused. For want of material while disposing of the Writ Petition it would be very difficult to estimate the just and appropriate compensation to be payable to the writ petitioner in such a case. However, it is brought to the notice of this Court that in pursuance of the representations already made, the concerned Revenue Divisional Officer is estimating the damage. Be that as it may, in view of the peculiar facts and circumstances of the case in case in pursuance of the prior representations already made, the District Collector, Karimnagar/4th respondent had already taken steps to further estimate the damage and decide the same in accordance with law and the same to be finalized and appropriate orders to be passed within a period of eight weeks from the date of receipt of the order. In case any such proceedings are not being processed by the 4th respondent, the petitioner is given liberty to make a fresh representation immediately within a period of one week from the date of receipt**

**of the order and on such representation being made to the 4th respondent, the 4th respondent shall consider the same in accordance with law and dispose of the same within a period of eight weeks thereafter.**

**With the above directions, the Writ Petition is disposed of. No costs.**

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**P.S.Narayana.,J**

**Dt. 25-11-2004**

**L.R. copy to be marked : YES / NO**

**AM**

To

**One fair copy to the Hon'ble Mr.Justice P.S.Narayana (for his Lordship's kind perusal)**

1 The State of A.P. Rep by its Chief Secretary to Govt., A.P.Secretariat, Hyderabad.
2 The Principal Secretary to Govt., Home Dept., A.P.Secretariat, Hyderabad.
3 The Principal Secretary to Govt., Revenue Dept., A.P.Secretariat, Hyderabad.
4 The District Collector, Karimnagar.
5 The Superintendent of Police, Karimnagar.
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